

JOREG IVAN TORRES
REG. NO. 16092-069/UNIT C-2
FEDERAL CORRECTIONAL INSTITUTION
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U.S. DISTRICT COURT
SAN JUAN, PR

Assisted and Prepared
By: Clarence T. Fox, Jr.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO
HATO REY PUERTO RICO

JORGE IVAN TORRES,
Defendant/Movant,

versus.

CASE NO. 97-229
Honorable Jose Antonio Fuste
U. S. District Judge

UNITED STATES OF AMERICA,
Plaintiff/Respondent.

PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2255

PLACE OF DETENTION:

FCI-Edgefield, P.O. Box 725, Edgefield, South Carolina 29824

1. NAME AND LOCATION OF THE COURT WHICH ENTERED THE JUDGMENT OR
CONVICTION UNDER ATTACK:

District of Puerto Rico, Hato Rey Puerto Rico.

2. DATE OF JUDGMENT OF CONVICTION?

November 16, 1998.

3. LENGTH OF SENTENCE?

360 months, followed by 60 months of supervise release (Count One
of the Indictment).

4. NATURE OF OFFENSE INVOLVED.

Conspiracy to possess with intent to distribute herion and
cocaine. (Count One)

5. WHAT WAS YOUR PLEA?

Guilty.

6. IF YOU PLEADED NOT GUILTY, WHAT KIND OF TRIAL DID YOU HAVE?

N/A.

7. DID YOU TESTIFY AT TRIAL?

N/A.

8. DID YOU APPEAL FROM THE JUDGMENT OF CONVICTION?

No.

9. IF YOU DID APPEAL, ANSWER THE FOLLOWING:

(a) Name of court: N/A

(b) Result: N/A

(c) Date of result: N/A

10. OTHER THAN A DIRECT APPEAL FROM THE JUDGMENT OF CONVICTION AND SENTENCE, HAVE YOU PREVIOUSLY FILED ANY PETITIONS, APPLICATIONS, OR MOTIONS WITH RESPECT TO THIS JUDGMENT IN ANY FEDERAL COURT?

Yes.

11. IF YOUR ANSWER TO 10 WAS "YES" GIVE THE FOLLOWING INFORMATION:

(a) (1) Name of Court: District of Puerto Rico

(2) Nature of the proceeding: Torres submitted a motion labeled "motion for out time notice of appeal. In which the First Circuit Court of Appeals construed it to a motion to vacate, set aside or correct sentence under 28 U.S.C. § 2255, without providing Torres a warning that the petition would be counted under the provision of the AEDPA as his first § 2255 motion.

(3) Grounds raised: Torres' trial counsel was ineffective because he failed to perfect an appeal upon Torres' request.

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes, upon remand from the First Circuit Court of Appeals.

(5) Result: Denied

(6) Date of result: October 16, 2000

(c) Did you appeal to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition: Yes

12. STATE CONCISELY EVERY GROUND WHICH YOU CLAIM THAT YOU ARE BEING HELD IN VIOLATION OF THE CONSTITUTION, LAWS, TREATIES OF THE UNITED STATES. SUMMARIZE BRIEFLY THE FACTS SUPPORTING EACH GROUND. IF NECESSARY, YOU MAY ATTACH PAGES STATING ADDITIONAL GROUNDS AND FACTS SUPPORTING THE SAME.

1. TORRES'S INSTANT § 2255 MOTION DOES NOT CONTEMPLATE A SECOND OR SUCCESSIVE 2255 MOTION BECAUSE THE FIRST CIRCUIT COURT OF APPEALS RECHARACTERIZED TORRES' MOTION LABELED OUT-OF-TIME NOTICE OF APPEAL INTO A § 2255 MOTION WITHOUT WARNING TORRES.

2. THE DISTRICT COURT JUDGE VIOLATED RULE 11(e)(1) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE, WHEN THE COURT PARTICIPATED IN THE PLEA DISCUSSION.

3. TORRES CAN SHOW CAUSE AND PREJUDICE FOR ANY PROCEDURAL DEFAULT DISCOVERED.

4. TORRES IS ENTITLED TO AN EVIDENTIARY HEARING AS A MATTER OF LAW.

See also attached Memorandum of Law in Support of Petition for Writ of Habeas Corpus, a copy which is attached hereto and incorporated by reference herewith.

13. IF ANY OF THE GROUNDS LISTED IN 12A,B,C, AND D WERE NOT PREVIOUSLY PRESENTED, STATE BRIEFLY WHAT GROUNDS WERE NOT SO PRESENTED, AND GIVE YOUR REASONS FOR NOT PRESENTING THEM:

None of the arguments in this petition have been litigated before, trial counsel failed to object to the claims, counsel's failure to object should be sufficient enough to establish cause prejudice.

14. DO YOU HAVE ANY PETITION OR APPEAL PENDING IN ANY COURT AS TO THE JUDGMENT UNDER ATTACK?

No.

15. GIVE THE NAME AND ADDRESS, IF KNOWN, OF EACH ATTORNEY WHO REPRESENTED YOU IN THE FOLLOWING STAGES OF THE JUDGMENT UNDER ATTACK HEREIN:

At arraignment and plea:

Juan E. Alvarez-Cobian
Doral Building
650 Munzo Rivera Avenue
Suite 306
San Juan, Puerto Rico 00918

At trial:

N/A.

At sentencing:

Idem.

On appeal:

N/A.

In any post-conviction proceeding:

Gordon R. Blakeney, Jr.
Building 4, Suite C
105 Loudon Road
Concord, N.H. 03301

16. WERE YOU SENTENCED ON MORE THAN ONE COUNT OF AN INDICTMENT, OR ON MORE THAN ONE INDICTMENT, IN THE SAME CASE COURT AT APPROXIMATELY THE SAME TIME.

No.

17. DO YOU HAVE ANY FUTURE SENTENCE TO SERVE AFTER YOU COMPLETE THE SENTENCE IMPOSED BY THE JUDGMENT UNDER ATTACK?

No.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on Janaury 28, 2005.



JORGE IVAN TORRES-RODRIGUEZ